

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CHRISTINA ENG EVINER, : 13-CV-6940 (MKB)
Plaintiff, :
-against- : United States Courthouse
YOKETING ENG, ET AL., : Brooklyn, New York
Defendants. : Monday, July 22, 2019
: 10:00 a.m.
-----X

TRANSCRIPT OF CIVIL CAUSE
FOR SETTLEMENT CONFERENCE
BEFORE THE HONORABLE MARGO K. BRODIE
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Plaintiff: SORIANO, HENKEL, BIEHL & MATTHEWS
75 Eisenhower Parkway
Roseland, New Jersey 07068
BY: FREDERICK C. BIEHL, III, ESQ.

For the Defendants MELITO & ADOLFSEN, P.C.
Yoketing Eng, 233 Broadway
Nicholas Eng, and Suite 1010
Benjamin Eng for New York, New York 10279
the Estate of Trinh BY: STEVEN I. LEWBEL, ESQ.
Eng:

For the Defendant DANBRIDGE LAW OFFICE
Anna Eng: 1120 6th Avenue
4th Floor
New York, New York 10036
BY: SHERILYN R. DANBRIDGE, ESQ.

For the Defendant GIBBONS, P.C.
CitiBank and Bank One Gateway Center
of New York/Mellon: Newark, New Jersey 07102-5310
BY: ROBERT K. MALONE, ESQ.

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1 Court Reporter: DAVID R. ROY, RPR
2 225 Cadman Plaza East
3 Brooklyn, New York 11201
4 drroyofcr@gmail.com

5 Proceedings recorded by Stenographic machine shorthand,
6 transcript produced by Computer-Assisted Transcription.

7 P R O C E E D I N G S

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10
11 (In open court.)

12 THE COURTROOM DEPUTY: Civil cause for a
13 settlement conference, Docket Number 13-CV-6940, Eviner
14 versus Yoketing Eng, et al.

15 Counsel, please state your appearance for the
16 record.

17 MR. BIEHL: Good morning, Your Honor.
18 Frederick C. Biehl, III, Soriano, Henkel, Biehl & Matthews,
19 attorneys for the Plaintiff Christina Eviner.

20 THE COURT: Good morning, Counsel.

21 MR. LEWBEL: Good morning, Judge. Steven Lewbel,
22 Melito & Adolfsen, on behalf of Defendants Yoketing Eng and
23 the Estate of Trinh Eng by Nicholas Eng and Benjamin Eng, as
24 personal representatives.

25 THE COURT: Good morning, Counsel.

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1 MR. MALONE: Good morning, Your Honor.

2 Robert Malone of Gibbons, PC, appearing on behalf of
3 CitiBank and Bank of New York, Your Honor.

4 THE COURT: Good morning.

5 MS. DANBRIDGE: Good morning, Your Honor.

6 Sherilyn Danbridge of the Danbridge Law Office appearing on
7 behalf of Anna Eng.

8 THE COURT: Good morning. And I ask that you each
9 turn your mic on and you can remain seated in addressing the
10 Court.

11 So we are here today, if I understand correctly,
12 for the parties to put a settlement agreement on the record?

13 MR. BIEHL: That's correct, Your Honor.

14 MR. LEWBEL: Correct, Your Honor.

15 THE COURT: Okay. Who wants to start?

16 MR. LEWBEL: In addition, Your Honor, I have my
17 clients here. I would like to have them allocute the
18 settlement on the record. I'm willing to go over it, if
19 Mr. Biehl prefers --

20 MR. BIEHL: That's fine.

21 MR. LEWBEL: -- and do it that way.

22 THE COURT: All right. Why don't you go over it.
23 Your clients can come forward and you can have them sit at
24 counsel table with you, I will have them put their names on
25 the record.

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1 MR. LEWBEL: Okay.

2 (Pause in proceedings.)

3 MR. LEWBEL: Your Honor, the parties to this
4 matter have reached a global, full settlement of this case
5 of all claims within this litigation which resolve this case
6 for all times.

7 THE COURT: Okay.

8 MR. LEWBEL: The agreement to settle has been
9 memorialized at this point in a draft settlement agreement
10 and mutual release, which has been distributed to all
11 counsel, in addition has been distributed to my clients.
12 That agreement is currently in draft; however, the
13 additional provisions that were discussed over the last few
14 days have been circulated among all parties and have been
15 agreed to by all parties. A final draft of that agreement,
16 I understand Mr. Biehl's office will be preparing today, and
17 it will be circulated for review and signature by all
18 parties probably in the next couple of days. Once that
19 agreement is signed by all parties, that will trigger
20 certain obligations and responsibilities under the
21 agreement, specifically my clients, the Estate, and Yoketing
22 Eng will be making payments in this case to the plaintiff as
23 well as to CitiBank. Once those payments clear, at that
24 point the parties will be submitting to the Court a
25 stipulation on consent to cancel and discharge the

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1 constructive trust that is currently in place in this case
2 under Docket Entries 196 and 284. That constructive trust
3 will be canceled in its entirety, and we would request that
4 it be so ordered.

5 The only thing I don't know, Judge, is do you want
6 me to submit that Your Honor or to
7 Magistrate Judge Orenstein, who was the magistrate judge who
8 signed that trust?

9 THE COURT: You do submit it to me, Counsel.

10 MR. LEWBEL: Thank you, Judge.

11 In addition, we will be submitting a stipulation
12 of dismissal with prejudice of all claims, and that will be
13 filed on the Pacer filing docket. And at that point,
14 the Court Clerk will terminate and seal the record because
15 there are confidentiality provisions within this agreement.

16 THE COURT: The stipulation itself?

17 MR. LEWBEL: Yes.

18 THE COURT: Okay.

19 MR. LEWBEL: Yes, correct, in the settlement
20 agreement, Judge.

21 THE COURT: So is it the stipulation that will
22 have confidential information or the settlement agreement?

23 MR. LEWBEL: The settlement agreement has
24 confidential information. The stipulation of dismissal does
25 not. It's a generic stipulation. So that's the document

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1 we're going to be filing.

2 THE COURT: Right. The stipulation itself?

3 MR. LEWBEL: Yes, Judge.

4 THE COURT: You do not have to file the settlement
5 agreement, unless you want to.

6 MR. LEWBEL: We do not --

7 MR. YOKETING ENG: No.

8 MR. LEWBEL: We do not want to file it.

9 I imagine there's no objection to that.

10 MS. DANBRIDGE: I don't have any objection.

11 MR. MALONE: No objection, Your Honor.

12 THE COURT: And the stipulation itself, to the
13 extent you want the Court to retain jurisdiction over any
14 issues with the settlement agreement, you need to specify
15 that in the stipulation.

16 MR. LEWBEL: Yes, Judge, I'll do that.

17 THE COURT: But you only need to file the
18 stipulation.

19 MR. LEWBEL: Correct.

20 And, of course, prior to that, we will file the
21 order discharging -- the consent order discharging and
22 canceling the constructive trust.

23 THE COURT: Yes.

24 And so do you want to put the terms of the
25 settlement on the record or you do not want to? It is

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1 totally up to you.

2 MR. LEWBEL: I would prefer not to put the terms
3 on the record, unless Counsel just want me to put the number
4 on the record. But that's up to everyone else.

5 MR. BIEHL: For the plaintiff, Your Honor, we
6 don't need that on the record.

7 THE COURT: Okay.

8 MR. LEWBEL: We don't either.

9 I'm going to ask my clients if they've read the
10 settlement agreement and agree to the terms, including the
11 amount that they are going to be paying.

12 THE COURT: Okay.

13 MR. LEWBEL: So we would prefer not to put the
14 actual terms.

15 I don't know if the Court wants me to mark it as a
16 court exhibit for purposes of today when I question them,
17 but I don't believe it's necessary once I question them if
18 they've read it.

19 THE COURT: You do not need to, Counsel.

20 MR. LEWBEL: Thank you, Judge.

21 THE COURT: Why don't you proceed?

22 MR. LEWBEL: Okay. I would like to call
23 Mr. Yoketing Eng.

24 Can I do it --

25 THE COURT: You can do it right there at counsel

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1 table --

2 MR. LEWBEL: Okay.

3 THE COURT: -- unless you want to put your clients
4 under oath. It is up to you.

5 MR. LEWBEL: I would like to put my clients under
6 oath.

7 THE COURT: Okay. Why don't you take the stand,
8 then.

9 MR. LEWBEL: Yoketing, why don't you please take
10 the stand.

11 MR. YOKETING ENG: Thank you.

12 THE COURT: Come on up, sir.

13 (The witness takes the witness stand.)

14 THE COURT: And may I ask you to stand and please
15 raise your right hand.

16 **Y O K E T I N G E N G,**

17 called as a witness having been.

18 first duly sworn/affirmed, was examined and
19 testified as follows:

20 THE COURTROOM DEPUTY: Please state and spell your
21 name for the record.

22 THE WITNESS: Yoketing Eng.

23 THE COURT: All right. You can sit down. Push
24 the mic out of your way.

25 THE WITNESS: Okay.

Yoketing Eng - Examination - Lewbel

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1 THE COURT: Have a seat.

2 THE WITNESS: Thank you.

3 THE COURT: Pull the mic towards you, and state
4 and spell your name for the record.

5 THE WITNESS: Yoketing Eng, Y-O -- first name,
6 Y-O-K-E-T-I-N-G; last name Eng, E-N-G.

7 THE COURT: Okay. Thank you.

8 Please proceed, Counsel.

9 MR. LEWBEL: Thank you, Your Honor.

10 EXAMINATION

11 BY MR. LEWBEL:

12 Q Mr. Eng -- or Yoketing, good morning.

13 A Good morning.

14 Q You can remain seated.

15 A Thank you.

16 Q Mr. Eng, are you suffering from any mental or physical
17 disability that you're aware of --

18 A No.

19 Q -- that would affect your ability to give true, full
20 answers here today?

21 A No, I'm not.

22 Q Are you on any medication or was there any medication
23 that you were supposed to take that you did not take that
24 you are aware of that would affect your ability to give
25 truthful answers here today?

1 A No.

2 Q Please give us your age, but not your date of birth.

3 A I'm 54.

4 Q Are you represented by Melito & Adolfsen in this case?

5 A Yes.

6 Q Did you direct or authorize my firm to enter into
7 settlement negotiations regarding the matter that brings us
8 here today?

9 A Yes.

10 Q And have I advised you that as a result of those
11 negotiations, a settlement has been reached in this matter?

12 A Yes.

13 Q All right. And in connection with that settlement, did
14 I provide you with a written agreement that memorializes or
15 addresses the terms of that settlement?

16 A Yes.

17 Q Did you read that agreement?

18 A Yes.

19 Q Okay. In connection with reading that agreement, did
20 you also have consultation with my office on the terms and
21 conditions of that agreement?

22 A Yes.

23 Q And at that point, did I explain to you the terms of
24 the agreement?

25 A Yes.

1 Q And did I do that in the company of Benjamin Eng and
2 Nicholas Eng, who are personal representatives of Trinh
3 Eng's Estate?

4 A Yes.

5 Q Did I explain the agreement and its terms to your
6 satisfaction?

7 A Yes.

8 Q Do you understand that under the agreement that one of
9 your obligations is to make certain payments in this matter?

10 A Yes.

11 Q Okay. And do you agree to make those payments?

12 A Yes.

13 Q And do you understand that in connection --

14 THE COURT: Slow down your questioning a little
15 bit, Counsel.

16 MR. LEWBEL: I'm sorry.

17 THE COURT: Go ahead.

18 BY MR. LEWBEL:

19 Q And in connection with making those payments, do you
20 understand that once those payments are made, the
21 constructive trust that's in place in this case will be
22 canceled?

23 A Yes.

24 Q And do you also understand that once those payments are
25 made and that constructive trust is canceled, the

1 obligations that you have under that constructive trust will
2 no longer be in effect; are you aware of that?

3 A Yes.

4 Q And do you understand that the properties that are
5 within that constructive trust once the payments are made,
6 will be released to you?

7 A Yes.

8 Q Did I also explain the other terms and conditions of
9 the agreement to you?

10 A Yes.

11 Q And are you still willing to go forward with the
12 settlement?

13 A Yes.

14 Q Do you understand that you do have the right to have a
15 trial by jury of this case?

16 A Yes.

17 Q And do you understand that in such a trial, a jury may
18 find that you don't owe any money?

19 A Yes.

20 Q Do you understand that a jury may find that you owe
21 less than you're agreeing to pay in this matter?

22 A Yes.

23 Q Do you understand that a jury may find that you owe
24 more --

25 A Yes.

1 Q -- that you're agreeing --

2 A Yes.

3 Q Okay. Are you willing to give up your right to a trial
4 by jury and resolve this case under the terms and conditions
5 of that settlement agreement?

6 A Yes.

7 Q Are you also aware that by settling this case, you are
8 giving up your right to appeal any of the decisions that
9 were made in this case during the course of this matter by
10 the Court?

11 A Yes.

12 Q Are you willing to enter into the settlement agreement
13 and give up your right to those appeals?

14 A Yes.

15 Q And do you also understand that by settling this case,
16 that this case will be over for all time?

17 A Yes.

18 Q That you will never be able to come back to court if
19 you have a change of heart, if you want to try a do-over,
20 those things will not be available to you by settling this
21 case today?

22 A Yes.

23 Q Are you still willing to go forward and settle the case
24 today?

25 A Yes.

1 Q And do you also understand that in addition to the
2 payment that you're making to resolve this case, there is
3 still an outstanding invoice from my firm dated June 26,
4 2017 -- excuse me, June 26, 2019 that you need to review and
5 address?

6 A Yes.

7 Q And did I also explain to you that for certain services
8 my firm rendered from June 26, 2019 up until final
9 conclusion for this case, there will be one additional
10 invoice that you will need to review and address?

11 A Yes.

12 Q Are you still willing to go forward with the settlement
13 of this case?

14 A Yes.

15 Q In connection with the settlement that you're entering
16 into today, has anyone pressured you, coerced you, or forced
17 you to enter into this settlement?

18 A No.

19 Q Are you entering into this settlement of your own free
20 will and sound mind?

21 A Yes.

22 Q And are you satisfied with the services that you
23 received from the Law Firm of Melito & Adolfsen in this
24 litigation?

25 A Yes.

1 Q Are you satisfied with the services that you received
2 from Attorney Steven Lewbel --

3 A Yes.

4 Q -- in connection with this action?

5 A Yes.

6 Q Given the testimony that you have given and the
7 questions that I have asked you, are you still willing to go
8 forward with the settlement?

9 A Yes.

10 Q Do you have any questions for me at this time
11 concerning the settlement?

12 A After I enter into the settlement -- after I -- after
13 I sign the settlement, how long will it take to release the
14 properties from the constructive trust?

15 Q What we addressed in the settlement agreement that
16 there is an mechanism in place as to once all of the checks
17 clear and that a document will be submitted to the Court,
18 and once the Court is satisfied with that document and
19 enters an order, then the constructive trust will be
20 released.

21 Are you still willing to go forward -- is that
22 response to your satisfaction?

23 A It's -- it's satisfactory, but I don't understand what
24 the -- what's -- what is the time period?

25 Q The time period is once the Court --

1 A Oh, my god...

2 Q -- signs the order and the order is circulated among
3 all counsel.

4 THE COURT: It sounds like the question is, What
5 happens before the order gets to the Court.

6 BY MR. LEWBEL:

7 Q Before the order gets to court, the checks have to be
8 paid. They have to be transferred to the payees, to
9 Christina and to CitiBank. And once those checks clear,
10 then within five days an order will be submitted to the
11 Court on consent, and once the Court enters that order, then
12 the properties will be released.

13 Is that acceptable to you?

14 A Yes.

15 Q Do you have any other questions for me?

16 A No.

17 Q Do you need an adjournment at this time to discuss the
18 issue regarding the clearance of the checks and the
19 canceling of the constructive trust?

20 A No.

21 MR. LEWBEL: Judge, I have no further questions
22 for this witness.

23 THE COURT: Okay. You may step down.

24 THE WITNESS: Thank you.

25 (The witness exits the witness stand.)

1 THE COURT: Is there a need to put any of the
2 other two individuals on the stand?

3 MR. LEWBEL: I just want to put Nicholas on
4 briefly just for one purpose, Judge.

5 THE COURT: Okay.

6 MR. LEWBEL: Nicholas, will you take the stand?

7 THE COURTROOM DEPUTY: Please raise your right
8 hand.

9 N I C H O L A S E N G,

10 called as a witness having been.

11 first duly sworn/affirmed, was examined and
12 testified as follows:

13 THE COURTROOM DEPUTY: Please state and spell your
14 name for the record.

15 THE WITNESS: Nicholas Eng.

16 THE COURT: Go ahead and spell it, please.

17 THE WITNESS: N-I-C-H-O-L-A-S, is the first name;
18 and Eng, E-N-G, is the last name.

19 THE COURT: Have a seat, Mr. Eng.

20 (The witness takes the witness stand.)

21 THE COURT: Please proceed, Counsel.

22 MR. LEWBEL: Thank you, Your Honor.

23 EXAMINATION

24 BY MR. LEWBEL:

25 Q Nicholas, are you personal representative of the Estate

1 of Trinh Eng?

2 A I am.

3 Q And give us your age, not your date of birth.

4 A Twenty-eight.

5 Q Was Trinh Eng your mother?

6 A Yes.

7 Q Were you present in the courtroom when I questioned
8 Yoketing Eng a few minutes ago?

9 A Yes.

10 Q And is Benjamin Eng also a personal representative of
11 the Estate?

12 A Yeah -- yes.

13 Q What is your relationship to Benjamin Eng?

14 A Benjamin Eng is my brother.

15 Q Is Benjamin Eng in the courtroom here today?

16 A He is.

17 Q Is Benjamin Eng sitting to the left of Yoketing Eng at
18 the same table that I'm sitting at?

19 A Yes.

20 Q Are you suffering from any physical or mental
21 disability that you're aware of that would affect your
22 ability to give truthful answers here today?

23 A I am not.

24 Q Are you on any medication or were there any medications
25 that you were supposed to take that you're aware of that

1 would affect your ability to give truthful answers here
2 today?

3 A No.

4 Q Other than your residence, your age, and your name, if
5 I were to ask you the exact same questions that I asked
6 Yoketing Eng regarding the settlement of this case, would
7 your answers be the same?

8 A Yes.

9 Q When I circulated the settlement agreement that brings
10 us here today, was Benjamin Eng present at the time we had
11 discussions about the agreement?

12 A Yes, he was.

13 Q Did I explain the settlement agreement to you to your
14 satisfaction?

15 A Yes.

16 Q Do you have any questions regarding that settlement
17 agreement?

18 A I do not.

19 Q Are you entering into -- on behalf of the Estate, did
20 you discuss the settlement agreement with Benjamin?

21 A Yes.

22 Q Do you or Benjamin have any objections to the
23 settlement agreement?

24 A No objections.

25 Q Are you satisfied -- or is the Estate of Trinh Eng

1 satisfied with the services it received from
2 Melito & Adolfsen in this case?

3 A Yes.

4 Q And is the Estate of Trinh Eng satisfied with the
5 services it received from Attorney Steven Lewbel in this
6 case?

7 A Yes.

8 Q Are you willing to go forward with the settlement and
9 the obligations that are contained therein?

10 A Yes.

11 Q Are you satisfied with the mechanism that's in place as
12 I explained to Yoketing Eng regarding the release of the
13 properties after the settlement checks clear, after an order
14 is submitted to the Court, and after the Court enters that
15 order?

16 A Very satisfied.

17 Q I'm sorry?

18 A Yes, very satisfied.

19 Q Are you entering the settlement agreement of your own
20 free will?

21 A Yes.

22 MR. LEWBEL: I have no further questions,
23 Your Honor.

24 THE COURT: Thank you. You may step down.

25 THE WITNESS: Thank you.

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1 (The witness exits the witness stand.)

2 THE COURT: Is there anything else that needs to
3 be put on the record by any parties?

4 MR. LEWBEL: The only other thing I just wanted to
5 mention, and I had mentioned this to Mr. Biehl, is that my
6 clients are going to -- pursuant to the terms of this
7 agreement, they have to withdraw certain funds from the
8 constructive trust within a certain period of time, and the
9 only thing I wanted to mention is that their intension is to
10 do that within the time parameters in the agreement so long
11 as the bank is not requiring any other impediments to this,
12 other than withdrawing the money.

13 THE COURT: I am not sure I am following you.

14 MR. LEWBEL: Yeah --

15 THE COURT: So are you looking to do it prior to
16 the order from the Court releasing --

17 MR. LEWBEL: Yes.

18 THE COURT: -- the constructive trust?

19 MR. LEWBEL: Yes.

20 We have a provision in the order to make the
21 payments in this -- most of the payments in this agreement,
22 my clients are required to withdraw certain funds from the
23 trust.

24 THE COURT: And are they able to do so without any
25 order from the Court?

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1 MR. LEWBEL: According to this agreement, the
2 parties have agreed that they are allowed to withdraw the
3 certain funds solely for the purpose of making the payments,
4 but the properties will still remain in the agreements until
5 such time as those checks clear. We've put a provision
6 within the agreement to do that.

7 I just want to make sure that that's not going to,
8 number one, run afoul of anything; and number two, that the
9 bank is not going to require any type of an order or any
10 type of --

11 THE COURT: I don't know, Counsel. I assume if
12 there's a constructive trust, that the bank will require
13 some documentation from the Court to allow anyone to
14 withdraw money.

15 MR. LEWBEL: All right. So what, we submit a
16 consent order on this?

17 MR. BIEHL: That would be fine with me. I have no
18 problem with doing that.

19 THE COURT: Okay. Counsel, is there anything else
20 we need the Court to be involved in? This is something that
21 can be --

22 MR. LEWBEL: Right.

23 THE COURT: -- discussed amongst yourselves. You
24 need to figure out from the bank whether or not you need
25 anything from the Court, and if so, you submit a consent

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1 order that the Court will promptly sign.

2 MR. LEWBEL: Okay. I have no further --

3 THE COURT: This is not a conversation that you
4 need to have with the Court.

5 MR. LEWBEL: I have nothing further from
6 the Court, Judge.

7 THE COURT: All right.

8 Anyone else?

9 MR. BIEHL: Your Honor, just one other item.
10 There is a reference in the settlement agreement to the bank
11 defendants, and we just want to put on the record that
12 CitiBank will take care of any other bank defendants and
13 that will be the one signatory for the settlement agreement
14 and the plaintiff is releasing all claims against the bank
15 defendants.

16 THE COURT: Do you mean in that CitiBank is acting
17 on behalf of all the banks that have been identified? I
18 believe CitiBank has always represented the other banks in
19 this proceeding.

20 MR. MALONE: Your Honor, Robert Malone. For the
21 record, that is correct. There is an indemnification from
22 those banks. CitiBank assumes that CitiBank has all the --

23 THE COURT: Your mic is not on.

24 MR. MALONE: Oh, I'm sorry.

25 THE COURT: All right. Go ahead.

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1 MR. MALONE: Again, Your Honor, Robert Malone of
2 Gibbons, P.C. for the bank defendants.

3 Your Honor, CitiBank by virtue of the
4 indemnification took over complete defense, and also as part
5 of that, has the right to settle or compromise any claims
6 whatsoever with respect to all the bank defendants. They
7 were left as a named defendant, but as far as the ability to
8 settle this case, we have the full authority.

9 THE COURT: And you will be acting on behalf of
10 all of them?

11 MR. MALONE: That is correct, Your Honor.

12 THE COURT: Anything else, Counsel?

13 MR. BIEHL: Nothing else from the plaintiff,
14 Your Honor. Thank you so much.

15 MR. LEWBEL: Nothing else, Judge.

16 THE COURT: Then we are adjourned, and I will
17 expect the documentations.

18 MR. LEWBEL: Thanks, Judge.

19 THE COURT: Have a good day, everyone.

20 MR. BIEHL: Thank you, Your Honor.

21 THE COURT: I'm glad the parties were able to
22 resolve this.

23 (Matter concluded.)

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EXAMINATION
BY MR. LEWBEL

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*I (we) certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.*

/s/ David R. Roy
DAVID R. ROY

16th Day of August, 2019
Date